PRIVY COUNCIL REPORT

LAM KEE YING SDN. BHD. v. LAM SHES TONG & ANOR.

[Privy Council (Lord Wilberforce, Viscount Dilhorne, Lord Simon of Glaisdale, Lord Kilbrandon and Sir Harry Gibbs) July 9, 1974]
[Privy Council Appeal No. 6 of 1973]

Land Law — Lease — Covenant not to assign, underlet or part with possession of demised premises — Whether there has been a breach — Relief against forfeiture — Whether agreement can be construed in light of subsequent conduct of parties — Discretion of court in giving relief — Costs — National Land Code, ss. 235 and 237.

In this case the appellants had leased certain premises to the respondents and it was covenanted in the lease that the lessee was not to assign, underlet or part with the possession of the demised premises. The respondent who had carried on business in partnership subsequently formed a company to which the business was sold. The business on the premises was carried on by the company and rent was tendered in the name of the company. The appellants thereupon brought an action alleging that there had been a breach of the covenant of the lease. In the High Court it was held that the respondent had committed a breach of the covenant in the lease and judgment was given for the appellants. On appeal the Federal Court held, [1973] 1 M.L.J. 203, that in the circumstances of the case the respondent was entitled to equitable relief under section 237 of the National Land Code, 1966, but they also held that the trial judge had erred in finding that there was a breach of covenant. The appellants appealed.

Held, dismissing the appeal: (1) the proper conclusion to be drawn from the whole of the evidence in the case was that the first respondent did part with possession of the premises. The trial judge was therefore correct in his conclusion that the evidence established a breach of the covenant of the lease;

(2) the Federal Court had jurisdiction to grant relief under section 237 of the National Land Code and in all the circumstances of the case it was right to grant such relief.

Cases referred to:-

(1) *Salomon* v. *Salomon & Co. Ltd.* (1897) A.C. 22.
(2) *Peebles* v. *Crosthwaite* (1863) 13 T.L.R. 37 at p. 38; 13 T.L.R. 198 at p. 199.
(3) *Jackson* v. *Simons* [1923] 1 Ch. 373 at p. 380.
(4) *Chaplin* v. *Smith* [1926] 1 K.B. 198 at p. 206, 209-11.
(5) *Pincott* v. *Moorstons Ltd.* (1937) 156 L.T. 139 at p. 140.
(6) *Stening* v. *Abrahams* [1931] 1 Ch. 470 at p. 473-474.
(7) *Crusoe d. Blencowe* v. *Bugby* (1771) 2 Wm. Bl. 766 at p. 767; 96 E.R. 448, 449.
(8) *Mitchison* v. *Thomson* (1883) 1 Cab. & El. 72.
(9) *Quilter* v. *Mapleson* (1882) 9 Q.B.D. 672.
(10) *Wilkinson Machine Tool Sales Ltd.* v. *L. Schuler A.G.* [1973] 2 W.L.R. 683.

PRIVY COUNCIL APPEAL FROM MALAYSIA.

G. Godfrey, Q.C., P. J. Millett, Q.C. and *J. Boggis* for the appellants.

J. W. Mills, Q.C., T. A. W. Lloyd and *Kam Woon Wah* for the respondents.

Sir Harry Gibbs (delivering the judgment of the Board): This is an appeal brought pursuant to leave granted by the Federal Court of Malaysia (Appellate Jurisdiction) from a judgment of that Court which upheld an appeal by the present respondents against a decision of the High Court in Malaya given in an action brought by the appellant company against the respondents claiming delivery of possession of the ground floor (excluding the mezzanine floor) of the premises at No. 32 Jalan Silang, Kuala Lumpur, and certain ancillary relief.

By a Memorandum of Lease dated 19 May 1964, made between Lam Kee Ying and Lam Yoo Chu as lessors and Lam Shes Tong trading as Lian Joo Company (the first respondent) as lessee, the lessors leased to the lessee all the ground floor excluding the mezzanine floor of the building at No. 32 Jalan Silang for the term of twenty five years from 1 May 1964 at a yearly rental of $6,000 payable monthly in advance at the rate of $500 per month. By Clause 1 of the Lease the lessee covenanted with the lessors *inter alia* as follows:

"(g) Not to assign, underlet or part with the possession of the demised premises or any part thereof without the prior written consent of the lessors such consent not to be unreasonably withheld.

(i) To use the demised premises for carrying on business as general merchants whether trading as a sole-proprietor or in partnership thereof."

By clause 2 the lessors covenanted with the lessee *inter alia* as follows:

"(d) In the event of Mr. Lam Kee Ying or his nominee is desirous of letting out the mezzanine floor, the lessee shall be given the first option to rent it at an additional monthly rental of $100, failing which the lessors are entitled to let it to others."

By Clause 3(a) the lessors were given a right of re-entry upon any default by the lessee in the observance or performance of any of his covenants.

Subsequently, on 18 November 1966, Lam Kee Ying, who had become the sole owner of the reversion, assigned it to the appellant Lam Kee Ying Sendirian Berhad, a company controlled by Lam Kee Ying. Before that date, namely on 25 November 1964, the mezzanine floor had been let by Lam Kee Ying to Tyma Company Limited, as the appellant company was then known — its name has since been changed. Lam Shes Tong discovered this fact in 1966 and complained to Lam Kee Ying that he had not been given the first option. In evidence given in the High Court Lam Kee Ying said:

"When first defendant questioned me why I did not give him the first option I told him Tyma Company was mine. There is no difference between me and Tyma Co. Ltd."

Although the Memorandum of Lease described the lessee as Lam Shes Tong trading as Lian Joo Company, it was conceded by Counsel for all parties during the proceedings in the High Court that it was intended that the lease should be given to Lam Shes Tong personally, although it was known that he was carrying on business in partnership and intended to continue to do so. The Lian Joo Company was a firm of which Lam Shes Tong was the managing partner. It carried on the business of general merchants, principally dealing in textiles, on the demised premises. On 30 June 1969 Lam Shes Tong and his partners, of whom at that time there were only two, entered into a written agreement which recited that the parties had agreed —

"to form a company for the purpose of acquiring as a going concern the business (hereinafter called the business) of textiles now carried on by them in partnership under the name of Lian Joo Company at No. 32 Jalan Silang, Kuala Lumpur."

It was provided by Clause 4(1) of this agreement that upon the formation of the company the parties would take steps to procure that the parties and the company

would enter into an agreement (therein referred to as the "sales agreement") "for the sale of the said business to the company". The company — Sharikat Lian Joo Textiles Sendirian Berhad, the second respondent — was incorporated on 13 August 1969. One of the objects for which it was established, according to Clause 3(a) of the Memorandum of Association, was:

"To acquire and take over as a going concern the business now carried on at Kuala Lumpur in the State of Selangor, Malaysia, under the name and style of Lian Joo Company and all or any of the assets and liabilities of the properties of that business in connection therewith and with a view to adopt the agreement referred to in Clause 4 of the Company's Articles of Association and to carry the same into effect with or without modification."

Clause 4 of the Articles provided:

"The directors shall forthwith adopt in the name and on behalf of the company an agreement dated the 30th June 1969 and made between Lam Shes Tong, Low Yeo Foong and Lam Sie Gin carrying on the trade or business under the name and style of 'Lian Joo Company' at No. 32 Jalan Silang, Kuala Lumpur in the State of Selangor, with such modification, if any, as may be agreed upon."

The total paid-up capital of the company is $180,000 of which $100,000 is held by Lam Shes Tong and the balance by his two former partners. Since that date the business formerly carried on by the partnership has been carried on by the company. During the latter half of 1969, pursuant to applications made by both respondents, the supply of electricity and water to the partnership was discontinued and fresh agreements were made for their supply to the company and the telephone service was similarly put into the name of the company. A signboard bearing the company's name was erected outside the premises. Receipts, bills and invoices in connection with the business were issued in the name of the company. In cross-examination, before the trial judge in the High Court, Lam Shes Tong said that no sales agreement as contemplated by Clause 4 of the Agreement of 30 June 1969 was ever executed. He was referred to Clause 3(a) of the Memorandum of Association and said that —

"When one took over business it would include the tenancy of premises."

He agreed that the change of name in respect of the water, electricity and telephone "indicates transfer or assignment of tenancy to the second defendant company". He also said that he did not sub-let or assign the premises to the second respondent and added:

"I only changed Lian Joo Company into a limited company. The partners of Lian Joo Company are the shareholders of the limited company...."

On 1 November 1969 a cheque for $500 drawn by the second respondent was tendered to the appellant as payment of a month's rent of the premises and it was this action which, according to the evidence which the trial judge accepted, first brought to the knowledge of Lam Kee Ying the fact that the second respondent was occupying the premises. Thereafter, on 13 November 1969, the solicitors for the appellant wrote to the first respondent purporting to determine the lease for a breach of Clause 1(g) and demanding possession, and wrote also to the second respondent claiming that it was a trespasser and threatening action unless it quit the premises forthwith. To these letters the solicitors for the respondents replied on the same day in the following terms:

"Our clients deny that there has been assigning, underletting or parting with possession of the demised premises because the lessee, Lam Shes Tong, is a major shareholder in the Sharikat. Under Clause (i) he is allowed to trade either as a sole-proprietor or in partnership with others."

On 10 December 1969 the appellant's solicitors, in purported compliance with section 235 of the National Land Code, whose provisions are similar in effect to those of section 146(1) of the Law of Property Act 1925 (U.K.), served a notice on the first respondent again specifying a breach of the covenant against assigning, underletting or parting with possession and stating that unless the breach were rectified and compensation paid within five days the appellant would take proceedings.

The action was commenced on 24 December 1969. The amended statement of claim (in paragraphs 6 and 8) alleged that in breach of covenant the first respondent on or about 13 November 1969 assigned or underlet or parted with the possession of part of the premises to the second respondent without the consent in writing of the appellant first obtained. Neither in the Statement of Claim nor in the earlier correspondence was it asserted that the first respondent had committed a breach of Clause 1(i) of the Lease, and that clause needs no further mention. The defence of the two respondents contained the following paragraph:

"4. The defendants deny paragraphs 6, 7, 8, 9, 10, 11 and 12 of the Statement of Claim, and the first defendant says that he has not assigned, underlet or parted with the possession of the premises or any part thereof because the second defendant company belongs to him and his family. In his own name he holds more than 50% of the shares of the limited company."

The respondents did not, in the alternative to their denial of a breach of covenant, counterclaim for relief against forfeiture.

In the High Court the trial judge said that he was satisfied on the balance of probabilities that the first respondent had committed a breach of the covenant contained in Clause 1(g) of the Lease. He considered that the provisions of Clause 3(a) of the Memorandum of Association, Clause 4 of the Articles of Association and the agreement of 30 June 1969 (and particularly the mention of a sales agreement in Clause 4(1) thereof) gave rise to the inference that the demised premises had been assigned or transferred to the second respondent as part of the taking over of the partnership business and in his opinion the admissions made by Lam Shes Tong in cross-examination supported this view. He relied also on the evidence as to the electricity, water supply and telephone installations, the erection of the signboard, the issue of receipts, bills and invoices in the name of the second respondent and the tender of rent by the second respondent's cheque. It is, however, not altogether clear whether he held that the breach consisted of an assignment, an underletting or a parting with possession. He considered the submission that there had been no breach because the shares in the second respondent were owned by the partners in the firm but rejected it, holding that the company was a separate legal entity from the first respondent. He dealt with and refused to accept certain other contentions, of which it is necessary to mention one only, that the appellant had not come to court with clean hands, having itself committed a breach of

Clause 2(d) of the Lease. As to this he held that the first respondent had learnt of the breach in 1966 and had waived it. He gave judgment for the appellant, ordered the respondents to deliver up vacant possession, further ordered the first respondent to pay mesne profits and awarded to the appellant the costs of the suit.

On appeal the Federal Court held that the case was one in which what was described as "equitable relief" should be granted. The reasons for the judgment of that Court were given by Ong C.J. After observing that the trial judge had referred to the maxim that he who comes to equity must come with clean hands and had found that the first respondent had waived his rights under the agreement, Ong C.J. said:

"With respect, we think that maxim in that light had no relevance at all and the judge thus misdirected himself. In the instant case, the lessee was not claiming his right to the mezzanine floor, but equitable relief against forfeiture as provided under section 237 of the National Land Code. This most material section was nowhere referred to by the judge or either counsel."

In the course of discussing whether relief should be granted, Ong C.J. said:

"It is a cardinal rule in the interpretation of documents that an agreement is to be construed as the parties themselves intended it to mean. Where the covenant was binding on him, Lam Kee Ying had clearly considered that Tyma Co. Ltd. and Sharikat Lam Kee Ying Sdn. Bhd. were merely his *alter ego* and he conducted himself and his companies on that footing. In our view what is sauce for the goose should also be sauce for the gander. He had, by precept and example, demonstrated that treating a limited company as the *alter ego* of its members was not, in the case of this particular lease, a breach of covenant on his part. If his case was an exception to *Salomon* v. *Salomon & Co. Ltd.*(1) then the lessee under the same lease should be entitled to the same liberal interpretation. To hold otherwise would be both unjust and erroneous."

Later he said:

"When one looks at the true character of the two companies, it can hardly be denied that Lam Shes Tong in fact has a better right than Lam Kee Ying to describe his company as his *alter ego*. The same three partners are shareholders in the new company; so that, if they were unobjectionable as partners occupying the demised premises, the objection to their company doing so must in the highest degree be purely technical."

The Federal Court concluded by saying that this "clearly is a case where equitable relief should be granted and the judgment of the Court set aside." However, the Court went on to hold that there was also another ground on which the appeal should be allowed, namely that the trial judge had erred in finding that there was a breach of covenant; in the opinion of the Federal Court, there had been no assignment of the lease and the second respondent, although let into occupation by leave and licence of the first respondent, had not been given possession.

The questions that fall for consideration by their Lordships on this appeal are whether the first respondent committed any breach of the covenant contained in Clause 1(g) of the Lease, and if so whether the Federal Court was right in granting relief against a forfeiture. Before their Lordships' Board, Counsel for the appellant very properly did not seek to maintain that there had been any assignment of the lease or any underletting. The sole breach alleged was a parting with the possession of the demised premises. It could not be disputed that the first respondent had permitted the second respondent to occupy the premises. Counsel for the respondents, again very properly, did not place any reliance on the fact that the second respondent was a company controlled by the lessee in submitting that there had been no parting with possession. Their submissions were based on a number of cases in which it was held that a lessee who retains the legal possession does not commit a breach of a covenant against parting with possession by allowing other people to use the premises: *Peebles* v. *Crosthwaite;*(2) *Jackson* v. *Simons;*(3) *Chaplin* v. *Smith;*(4) *Pincott* v. *Moorstons Limited.*(5) Accordingly it has been said that a lessee who grants a licence to another to use the demised premises does not commit a breach of the covenant "unless his agreement with his licensee wholly ousts him from the legal possession... nothing short of a complete exclusion of the grantor or licensor from the legal possession for all purposes amounts to a parting with possession": *Stening* v. *Abrahams.*(6) Their Lordships regard these decisions as settling the law and as proceeding upon correct principles. A covenant which forbids a parting with possession is not broken by a lessee who in law retains the possession even though he allows another to use and occupy the premises. It may be that the covenant, on this construction, will be of little value to a lessor in many cases and will admit of easy evasion by a lessee who is competently advised, but the words of the covenant must be strictly construed, since if the covenant is broken a forfeiture may result: *Crusoe d. Blencowe* v. *Bugby;*(7) *Chaplin* v. *Smith, supra*, at page 210.

Counsel for the respondents submitted that the facts of the present case were indistinguishable from those of *Peebles* v. *Crosthwaite*. In that case, the executors of a lessee sold the premises and business to a company. The stock was delivered to the company which was allowed to use the demised premises; the company's name was put up on the premises, which were registered as its registered office. However the property was not assigned to the company, the executors having been advised by their solicitor that they should not part with possession. It was held that there had been no breach of the covenant in the lease against parting with possession without the previous licence of the lessors. The same conclusion was reached in *Chaplin* v. *Smith* where the facts were in many respects similar to those in *Peebles* v. *Crosthwaite*. However the question whether the first respondent has parted with possession must depend upon all the facts and circumstances of the present case which in their Lordships' opinion are distinguishable from those of the cases cited. Some of the evidence — as to the erection of the signboard, the transfer of the electricity, water supply and telephone and the issue of receipts, bills and invoices in the name of the second respondent — is equivocal and is quite consistent with a conclusion that although the second respondent occupied the premises the first respondent retained possession. However the fact that the second respondent tendered its own cheque in payment of the rent is some evidence that the second respondent regarded itself, and was regarded by the first respondent, as having possession of the premises. Even more significant in their Lordships' opinion is the fact that at no time before the

trial or in evidence did the respondents give an unqualified denial that the first respondent had parted with possession to the second respondent. In their solicitors' letter of 13 November 1969, in their defence and in evidence the reply given by the respondents to the claim that they had broken the covenant was not that there had in fact been no parting with possession, but that there had been no parting with possession because the first respondent was a major shareholder in the second respondent. If in truth the second respondent had merely been given a licence to occupy the premises, and the first respondent had retained possession, it would have been easy for someone to say so. The other evidence that is in itself equivocal is to be understood in the light of the fact that the respondents, who could have produced affirmative evidence that the first respondent retained possession if that had been the fact, failed to do so. In their Lordships' opinion the proper conclusion to be drawn from the whole of the evidence in the case, scanty as it may be, is that the first respondent did part with possession of the premises. The trial judge was therefore correct in his conclusion that the evidence established a breach of the covenant contained in Clause 1(g) of the Lease.

The question that then arises is whether it was right for the Federal Court to grant relief under section 237 of the National Land Code. That section reads as follows:

"(1) Any lessee, sub-lessee or tenant against whom any person or body is proceeding to enforce a forfeiture may apply to the court for relief against the forfeiture; and the court —

(a) may grant or refuse relief as it thinks fit, having regard to all the circumstances of the case (including, if the case is one to which the provisions of section 235 applied, the proceedings and conduct of the parties under that section); and

(b) if it grants relief, may do so on such terms as it thinks fit.

(2) The provisions of sub-section (1) shall have effect notwithstanding any provision to the contrary in the lease, sublease or tenancy in question."

On behalf of the appellant it was objected that the Federal Court had no jurisdiction to grant relief because no application had been made by the respondents for relief as required by the section. It is perfectly true that the respondents' pleadings did not contain any application for relief and that no application was made to the judge at the trial. However an application for relief was made to the Federal Court and although Counsel did not expressly refer to section 237 of the National Land Code the judges of the Federal Court understood the application as referring to relief under that section. The power given by the section is to grant relief upon an application made by (*inter alios*) a lessee against whom any person is proceeding to enforce a forfeiture. The application made in the present case, although informal, answered that description. Section 237 does not require that an application should be made in any particular way. It has been held, under the provisions of section 14 of the Conveyancing and Law of Property Act 1881 (U.K.), on which the provisions of section 237 were obviously modelled, that a Court may grant relief to a lessee who has not claimed it by his pleadings: *Mitchison* v. *Thomson*;[8] and see *Quilter* v. *Mapleson*.[9] In their Lordships' opinion, although the ordinary and proper course for a lessee against whom a lessor has brought proceedings for forfeiture and who seeks relief, is to claim it by his pleadings, the lodging of a counter-claim is not a condition precedent to relief. In the present case the proceedings would have been more regular if the respondents had been required to amend their pleadings but a mere irregularity of procedure does not warrant the intervention of their Lordships' Board where it has not been shown that any injustice has resulted. It could not be suggested in the present case that the appellant had been taken by surprise by the application for relief — the matter of surprise rather is that the application was not made at an earlier stage of the proceedings. When the application was made to the Federal Court the appellant did not seek an adjournment to enable further material to be put before the Court in answer to the application and it does not appear that there was any relevant material, not already in evidence, that could have been adduced.

Their Lordships consider that the present case was clearly one in which relief against forfeiture should have been granted. The second respondent, which was formed to take over the business of the first respondent, carried on upon the demised premises the same business in the same manner as before. The shares in the second respondent were held by the three persons who had previously traded in partnership, one of whom, the lessee, had a substantial majority of the shares. Although a lessor is not bound blindly to give his consent to an assignment of a lease to any company which the lessee may form to carry on his business, and although in some cases of that kind where an assignment ought to be permitted it may be prudent for the lessor to require guarantees from the lessee, in the circumstances of the present case it would have been unreasonable for the appellant to withhold its consent to an assignment of the lease to the second respondent had that been sought. Further, the Federal Court was entitled to consider, as one of the circumstances of the case, the views expressed by Lam Kee Ying as to the effect of Clause 2(d) when the mezzanine floor was leased to the appellant company and no opportunity to lease it was given to the first respondent. If the Federal Court intended to suggest that the utterances and conduct of Lam Kee Ying, some time after the lease was granted, were relevant to the construction of the lease, their Lordships are quite unable to agree, for the general principle, recently reaffirmed in *Wickman Machine Tool Sales Ltd.* v. *L. Schuler A.G.*,[10] is that an agreement cannot be construed in the light of the subsequent conduct of the parties and the present case, where the subsequent acts and assertions were done and made by one of the parties in his own interest, and where the instrument to be construed was in any case unambiguous, is clearly not within any exception to the rule. However the attitude taken by Lam Kee Ying in relation to the letting of the mezzanine floor, and its possible effect in misleading the first respondent, were matters appropriate to be considered in the exercise of the wide discretion conferred by section 237.

For the reasons given their Lordships are of the opinion that the Federal Court had jurisdiction to grant relief under section 237 of the National Land Code and that in all the circumstances of the present case it was right to grant relief.

As a general rule a lessee who, being in breach of a covenant, seeks relief against forfeiture, is required to pay the costs occasioned by his application. In the present case it was not necessary for the Federal Court to consider whether it should adhere to the ordinary rule because that Court, having decided that the case was a proper one for the grant of relief, nevertheless went on to hold that no breach of covenant had been made out. Since their Lordships have formed a different opinion on that point it is necessary to consider what order ought to be made in respect of the costs of the trial and in their Lordships' opinion these should be paid by the respondents. However their Lordships would affirm the order of the Federal Court that the respondents should have the costs of the appeal to that Court.

Their Lordships will therefore advise the Head of Malaysia that the appeal should be dismissed but that the order of the Federal Court of Malaysia (Appellate Jurisdiction) should be varied by deleting the words —

"the respondents do pay to the appellants the costs of this appeal and in the court below"

and by substituting therefor the words —

"the appellants do pay to the respondents the costs in the court below and the respondents do pay to the appellants the costs of this appeal."

Their Lordships will further advise that the appellants should pay the respondents' costs of the appeal to their Lordships' Board.

Appeal dismissed.

Solicitors: *Coward Chance* (for *Shook Lin & Bok*); *Sole, Solebridge & Co.* (for *Sharikat Kam Woon Wah*).

MALAYSIAN REPORTS

T.O. THOMAS v. K.C.I. REDDY & ANOR.

[F.C. (Azmi L.P., Lee Hun Hoe C.J. (Borneo) and Gill C.J. (Malaya) May 31, 1974]

[Kuching — Federal Court Civil Appeal No. 83 of 1973]

Practice and Procedure — Order made by Judge in Court confirming, setting aside or varying order made in Chambers after hearing further argument — Whether appeal from such order requires leave — R.S.C. 1957, O. 54 r. 22A — Courts of Judicature Act, 1964, s. 68(2).

In this case the appellant had filed a suit for libel against the respondents. The first respondent applied for production of a letter written by the second respondent to the appellant but this was resisted by the appellant on the ground that the document was a privileged communication. On application to the judge in chambers, the learned judge made an order in terms of the application. The appellant requested the learned judge to have the matter argued further in open court. This was done and after hearing arguments and an adjournment for consideration the learned judge confirmed the order which he had made in chambers. The appellant appealed to the Federal Court but the first respondent applied for the appeal to be dismissed on the ground that no leave had been obtained from the judge or the Federal Court in compliance with section 68(2) of the Courts of Judicature Act, 1964.

Held: Azmi L.P. and Gill C.J., Lee Hun Hoe C.J. dissenting: the order made by the learned judge although an interlocutory order was made by him in court and not in chambers and therefore no leave was required for appeal against the order.

Cases referred to:-

(1) *Nagappa Rengasamy Pillai* v. *Lim Lee Chong* [1968] 2 M.L.J. 91.

(2) *Forrester* v. *Jones* [1899] W.N. 78.

(3) *Sri Jaya Transport Co Ltd.* v. *Fernandez* [1970] 1 M.L.J. 87.

(4) *Magor and St Mellons Rural District Council* v. *Newport Corporation* [1952] A.C. 189 p. 191.

FEDERAL COURT.

Appellant in person.

Denis Ong for the first respondent.

Fong Joo Chung for the second respondent.

Azmi L.P.: The plaintiff filed a suit against the first defendant for libel alleged to be contained in a letter sent by the latter to him which reads as follows: —

"The allegation contained in your letter is mischievous and without any basis. As an officer of court I expected your firm to exercise caution and sobriety before giving currency to the idea communicated in your letter. Far from being so, you have merely acted as a conduit pipe and a purveyor of falsehood."

A carbon copy of the letter was sent to the Deputy Public Prosecutor, Kuching.

It would appear from the pleadings that this letter was sent by the first defendant in reply to a letter previously sent by the plaintiff to him. The relevant part of the plaintiff's letter reads as follows: —

"..... Our client says that the case against him is scheduled for hearing, commencing the 26th instant, in the court presided over by you. And he further says that a high official in the Government of Sarawak told him of a casual conversation you had with that official about this case. From what he so heard it appears to our client that you are likely to have preconceived ideas about him and therefore you will not be able to hear the case against him with an unbiased mind."